

REMARKS

The Applicants hereby submit this Amendment and Request For Reconsideration in response to the Office Action mailed on 24 September 2009 for the above-identified patent application.

In the present Amendment, the Applicants amend claims 1, 3-5, 7-8, 10, 12, 15-21, 26, and 28-33; no claims have been added or canceled. No new matter has been entered by this paper; the claim amendments are fully supported by the application as originally filed. The Applicants respectfully request entry of the amendment and reconsideration of the claims as revised.

In the Office Action of 24 September 2009, the Examiner rejected most claims of the present application under 35 U.S.C. § 103(a) as being unpatentable over Misra et al. (U.S. Patent Application Publication No. US2002/0087716) in view of Harris (U.S. Patent No. 7,050,411). Furthermore, the Examiner rejected claims 8-10, 14, 19-21, 25, 31-32, and 37-38 as being unpatentable under 35 U.S.C. § 103(a) based on Misra et al. in view of Harris and in further view of Mustafa (U.S. Patent Application Publication No. 2002/0087716). Finally, the Examiner has rejected claims 13 and 24 as being unpatentable over Mustafa in view of Ryan et al (U.S. Patent Application Publication No. 2004/0095903), but fails to show how the Ryan reference is combined with Mustafa to show the elements of claims 13 and 24. It is noted that the Office Action includes rejections for claims 34-43 which have been withdrawn from consideration.

In response, the Applicants respectfully disagree with the rejections, especially in light of the claim amendments made herein, and submit that claims 1-33 as revised are allowable over the prior art for at least the following reasons.

In order to properly establish rejections under 35 U.S.C. § 103(a), the prior art alone or in combination must teach or suggest each and every limitation of the claims.

When determining whether a claim is obvious, an examiner must make "a searching comparison of the claimed invention - including all its limitations - with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Ex Parte Wada and Murphy, Appeal No. 2007-3733, Bd. Pat. App. & Inter., January 14, 2008.

In the present case, the relied upon art fails to teach or suggest each and every limitation of the claims.

1. The Relied Upon Art Fails To Teach Or Suggest A Technique Which Involves Receiving, Through A User Interface Of A Mobile Device, A Voice Call Request For Initiating A Voice Call From The Mobile Device, As Claimed.

Claims 1-33 of the present application are specifically directed to techniques performed by a mobile device adapted to operate in a wireless communication network. The mobile device utilizes a radio traffic channel with the wireless network for the communication of user data for a connected data communication session. As claimed, this mobile device is the same device that *receives, via its user interface, the voice call request for initiating a voice call from the mobile device, and performs the specifically recited acts in response to the receipt of such voice call request.*

The Examiner alleges that the Misra reference teaches or suggests the recited limitations. However, the Examiner is clearly wrong. Misra does not teach or suggest the receipt of a voice request via *a user interface of a*

mobile device for initiating a voice call from the mobile device the specifically recited actions. As claimed, the voice call associated with the voice call request is initiated from, not to be answered by, the mobile device.

The Examiner refers to paragraphs [0002] and [0009] of the Misra reference in alleging the existence of these claimed limitations. In paragraph [0002] of Misra, it is taught that a wireless network (not a mobile station) receives incoming voice call attempts, which are subsequently rejected by the wireless network. The passage reveals that “[w]hile a mobile station is in an active packet data session, the wireless communication network may automatically reject any incoming voice call attempt to the mobile station.” Thus, it is clear that paragraph [0002] of Misra does not teach or suggest any incoming voice call request for initiating a voice call from a mobile device which is received at a user interface of the mobile device. There is no initiation of a voice call from a mobile device in the relied upon art.

In paragraph [0009] of Misra, it is taught that a Mobile Switching Center (MSC) sets up a packet data session with a mobile station for data services. However, what is claimed is the receipt of a voice call request for initiating a voice call – not a data service – for the mobile device. Thus, it is clear that paragraph [0009] of Misra does not teach or suggest any incoming voice call request for initiating a voice call from a mobile device which is received at a user interface of the mobile device. Therefore, with respect to either paragraph, the Examiner is wrong.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdraw the rejections of claims 1-33 as revised and allow the application.

2. The Relied Upon Art Fails To Teach Or Suggest An Existing Traffic Channel Utilized For Carrying User Data For The Connected Data Communication Service To Be Torn Down In Response To Receiving The Voice Call Request As Claimed.

In order to properly establish rejections under 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation of the claims. In the present case, the relied upon art fails to teach or suggest every limitation of the present claims.

The Examiner concedes that Misra does not explicitly show that in response to the receiving of the voice call request during the connected data communication service: causing a radio traffic channel between the mobile communication device and the wireless communication network which is utilized for carrying user data for the connected data communication service to be torn down; and causing the voice call to be established with the mobile communication device via the wireless communication network.

Although the Examiner concedes that Misra does not teach this feature, the Examiner alleges that the Harris reference teaches or suggests the recited step. In response, the Applicants respectfully disagree. Harris does not even teach or suggest an *existing radio traffic channel which is utilized for carrying user data for the connected data communication service* as claimed. Rather, Harris pertains to providing data, voice and dispatch services over a code division multiple access 2000 (CDMA 2000) system. (see Harris in column 1, at lines 6-8). "Dispatch" is well-known in the art as a voice communication between speaker and listener. As embodied in Harris, dispatch is often a half-duplex voice conversation in which the communication can occur in both directions, but only one direction at a time. Typically, this is accomplished by a switch which coordinates the direction of voice traffic in either direction.

The specific problem addressed by Harris is clearly stated in the second paragraph:

Providing data services over CDMA 2000 requires that the voice bearer traffic be transmitted through radio link protocol (RLP). Radio link protocol provides for two types of channels, a FCH channel which is the only type of channel for providing voice services and a DCCH channel. (see column 1, lines 6-13)

In order to support data services (not otherwise described in the Harris reference), the network has required all *voice bearer traffic* to be transmitted using radio link protocol. Harris describes the dynamic switching between FCH and DCCH for dispatch and voice services – both of which may be voice bearer traffic. Although voice traffic may be digitized and sent as “data” on these channels, it still described in terms of voice services and/or dispatch services - not the claimed “user data.” As apparent, there is no teaching or suggestion in Harris of an existing radio traffic channel which is utilized for carrying *user data* for a connected data communication service as recited in the present claims.

Further, the Examiner refers to col. 5 lines 10-17 of Harris for the alleged teaching of the recited “in response to the receiving of the voice call request during the connected data communication service.” The passage is recited below for reference:

Block 140 determines whether the call is an interconnect (voice) call that is requesting a dispatch (data) call service. If not, block 140 simply ends the process via the NO path. If so, block 140 transfers control to block 142. Block 142 detects that a speaker has pressed the dispatch service button and is granted the permission by the system. Block 144 determines whether the link is more forward or reverse interference limited. (col. 5 lines 10-17 of Harris)

Although may not be clear at the first reading, the cited passage actually pertains to a dispatch call request while the mobile device is engaged in a

voice call. As recited in the present claims, the mobile device receives a voice call request while engaged in a connected data communication service. In fact, if this scenario were to be applied to the recited passage, the process would simply end via the NO path of Block 140.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdrawn the rejections of claims 1-33 and submit that the claims are allowable over the prior art of record.

3. The Relied Upon Art Fails To Teach Or Suggest A Technique Of A Mobile Communication Device Which Sends A Release Order For Tearing Down An Existing Radio Traffic Channel Of A Connected Data Communication Service In Response To Receiving The Voice Call Request Via The User Interface, As Claimed.

As described above, claims 1-33 of the application are directed to techniques performed by a mobile communication device which utilizes an existing radio traffic channel with a wireless network for the communication of user data for a connected data communication session. As claimed, this mobile device is the same device that receives, via its user interface, the voice call request for the voice call, *and sends a release order for tearing down the existing radio traffic channel of the connected data communication service in response to receiving such voice call request.*

The Examiner suggests that the Harris reference may disclose limitations related to this claimed step. In response, the Applicants respectfully disagree. Harris does not teach or suggest the mobile's sending of a release order for tearing down an existing radio traffic channel of a connected data communication service, as claimed.

In the rejection of claims, the Examiner makes reference to column 3 at lines 20-32 of Harris in attempt to identify such claimed limitations. The paragraph in column 3 of Harris states that

Block 50 determines whether an existing dispatch call (data) needs to make an interconnect call (voice call). That is, whether a data transmission call needs to make a basic voice call. If an interactive call is requested, block 50 transfers control to block 52 via the YES path. Block 52 determines whether the existing channel is a DCCH channel. If the channel is a DCCH channel, then the DCCH channel is switched to a FCH channel, block 54. The switch from the DCCH channel to the FCH channel occurs with a single message from the switching network. The switching is performed by the network without tearing down the existing traffic channel which implies a lower delay. The process is then ended. If the channel is not a DCCH channel, then a FCH channel is already in use and block 52 simply ends the process via the NO path. (*Emphasis Added*)

Further, the Harris reference is titled "Dynamic DCCH/FCH Switching," and pertains to a communication between speaker and listener in which radio link protocol channels are switched dynamically (see e.g. the Abstract of Harris). The technique of Harris begins when "a dispatch call origination is detected by the base station, block 22" and the base station makes determination whether the speaker's air link is more forward or reverse interference limited and uses this determination in assigning a DCCH channel or an FCH channel to the speaker (see Col 3, links 43-56, and FIG. 2 blocks 22-30 of Harris). The same process is performed for each listener in blocks 32-38.

When the speaker changes, block 42 determines the previous channel type and changes the channel types from FCH to DCCH (and vice versa) for the speaker and listener (see FIG. 2, blocks 42-48 of Harris). Finally, when the conversation which existed as a dispatch call (data) needs to convert to an interconnect call (voice call, also called interactive call), then the channel type may be switched by the switching network, the "switching performed by the network **without tearing down the existing traffic channel**" (see the above cited passage in Harris, quoted with emphasis).

As apparent, Harris does not teach or suggest that an existing radio traffic channel is torn down and a new traffic channel is established, as

recited in the claims. Rather, Harris is simply switching or changing the channel *type* used for a single conversation. In the Background section, in column 1 at lines 9-35 of Harris, a network in which voice bearer traffic is required to be transmitted through radio link protocol having two types of channels is described. It is clear from the cited passage, however, that the network is capable of switching the *type* of channel without the radio channel being torn down. In contrast, the technique as claimed is one that involves the mobile device's sending of a release order for tearing down the existing radio traffic channel of the connected data communication service. As apparent, Harris may be viewed as teaching just the opposite of that which is claimed.

Based on these reasons alone, the Applicants respectfully request the Examiner to withdraw the rejections of claims 1-33 and submit that the claims are allowable over the prior art of record.

As the prior art of record fails to teach or suggest each and every limitation of the claims, the rejections under 35 U.S.C. § 103(a) fail and the claims are allowable over the prior art. Other reasons for the allowability of revised claims 1-33 over the prior art are apparent to those of ordinary skill in the art, and are not outlined herein due to the sufficient reasons for allowability already provided above.

Thank you. Please feel free to contact the undersigned if it would expedite prosecution of the application.

Respectfully Submitted,
/John J. Oskorep/

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